



DFARS Cases of Interest

FAR DFARS Review

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Cases of Interest

- ▶ Limitations on Tiered Evaluations of Offers
- ▶ Consolidation of Contract Requirements
- ▶ Sole Source 8(a) Awards to Small Business Concerns Owned by Native Hawaiian Organizations
- ▶ Clarify the Threshold for Small Business Specialist Review



DFARS Case 2006-D009

Limitations on Tiered Evaluations of Offers

► Source:

- Section 816 of the FY 2006 National Defense Authorization Act

► Synopsis:

- Prohibits use of tiered evaluation unless after conducting market research the contracting officer cannot determine whether limiting competition to small business is justified and the contracting officer documents the file

► Status:

- Interim rule published Sept 8, 2006 - Comments due Nov 7, 2006



DFARS Case 2003-D109

Consolidation of Contract Requirements

► Source:

- Section 801 of FY 04 National Defense Authorization Act

► Synopsis:

- Places restrictions on consolidation of two or more requirements (previously provided under separate contracts) into a single solicitation or contract (including a multiple award contract) when the total estimated value of the resulting consolidated contract exceeds \$5M



DFARS Case 2004-D031

Sole Source 8(a) Awards to Small Business Concerns Owned by Native Hawaiian Organizations

► Source:

- Section 8021 of the FY 04, FY 05, and FY 06 DoD Appropriations Acts

► Synopsis:

- Permits small businesses owned by Native Hawaiian Organizations to receive sole source awards above the thresholds at which 8(a) competition is required



DFARS Case 2003-D060

Clarify the Threshold for Small Business Specialist Review

► Source:

- DoD

► Synopsis:

- Eliminates requirement for small business specialist to review proposed acquisition under \$100K when totally set-aside for small business
- PGI coverage added to highlight agency flexibility and provide additional guidance



Extensions of Programs, Goals and Agreements

▶ **Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans**

- Program provides for plans to be negotiated on a plant, division, or company-wide basis rather than on an individual contract basis
- Program has been extended **through September 30, 2010**

▶ **Contract Goal for Small Disadvantaged Businesses and Certain Institutions of Higher Learning**

- DoD's 5% contract and subcontract goal for SDBs and HBCU/MIs has been extended **through FY 2009**



Extensions of Programs, Goals and Agreements

► **Mentor-Protégé Program**

- Mentor firms must incur the costs before [October 1, 2013](#) in order for those costs to be eligible for reimbursement or crediting toward a subcontracting plan

► **Partnership Agreement with SBA for 8(a) Program**

- Agreement with SBA that allows DoD to award contracts directly to 8(a) Program participants has been extended to [December 1, 2006](#)
- Memo extending the agreement is in PGI 219.8



Cases of Interest

- ▶ **RFID**
- ▶ **Approval of Service Contracts and Task Orders**
- ▶ **Competition Requirements for FSSs and MACs**
- ▶ **Transition of Certain Weapons-Related Prototype Projects to Follow-On Contracts**



Cases of Interest

- ▶ **Limitations on Contract Period for Task and Delivery Order Contracts**
- ▶ **Multiyear Contracting**
- ▶ **Inherently Governmental Functions**
- ▶ **Other Strategy DFARS Cases**
- ▶ **On the Horizon**



RFID

- ▶ 2nd year of DoD's 3 year implementation of radio frequency identification (RFID)
- ▶ Adds 3 new commodities that require passive RFID tags at the case and palletized unit load levels
 - Packaged petroleum and other chemicals and additives
 - Construction and barrier material
 - Medical materials



RFID

- ▶ Advance shipment notice required to provide the association between-
 - Unique identification encoded on the passive tag
 - Product information for the case or palletized unit load
- ▶ Sept 30 sunset date for certain classes of tags



Approval of Service Contracts and Task Orders

- ▶ Implements Section 801(b) of the FY 02 and Section 854 of the FY05 National Defense Authorization Act
 - Established requirements for DoD to obtain certain approvals before acquiring services that are—
 - **Not performance-based** or
 - Acquired through a **non-DoD contract** or task order



Approval of Service Contracts and Task Orders

▶ Section 801

- Established a series of DoD requirements
- Resulted in each military department establishing **review and approval procedures** for acquisitions of services

▶ Section 854

- DoD can procure goods or services through a non-DoD contract
- But only if in accordance with military departments' **review and approval procedures**



Competition Requirements for FSSs and MACs

Revises procedures for use of FSSs and MACs to promote competition in the placement of orders

- Revises approval requirements for placement of noncompetitive FSSs orders exceeding \$100K under FSS to be consistent with the FAR requirements
- Extends the same requirements to orders under MACs
- Applies the same ordering procedures to supplies and services



Transition of Certain Weapons-Related Prototype Projects to Follow-On Contracts

► Implements Section 847 of the FY04 NDAA

- Use Part 12 procedures to award follow-on contracts for the production of an item or process that begun as a prototype project under an OTA when the item or process is not a “commercial item”
- Contract can not exceed \$50M and must be—
 - Awarded to a **nontraditional defense contractor**
 - Awarded before September 30, 2008
 - FFP or FFP EPA



Limitations on Contract Period for Task and Delivery Order Contracts

► Implements Section 843 of FY04 NDAA and Section 813 of the FY 05 NDAA

- Section 843 placed a 5-year limit on the period of task or delivery order contracts
- Section 813 extended the total period to 10 years



Limitations on Contract Period for Task and Delivery Order Contracts

10-year limit applies to the ordering period

- **Head of the agency** can extend further with a written determination that exceptional circumstances justify a longer contract period
 - If contract period >10 years, DoD required to report the rationale to Congress
- Adds restrictions on the period of performance
- Cannot exceed 1 year beyond the 10-year limit unless approved by the SPE



Multiyear Contracting

- ▶ Implements Section 8008 of Defense Appropriations Act for FY 2005 and Section 814 of the NDAA for FY 2005
- ▶ Appropriations Act restrictions
 - Can only award multiyear contract if—
 - Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured
 - Cancellation provisions do not include consideration of recurring manufacturing cost for the production of unfunded units
 - Contract does not provide for price adjustment for failure to award follow-on contract



Multiyear Contracting

- ▶ Authorization Act restrictions
 - If multiyear contract has a cancellation ceiling > \$100M that is not fully funded, agency must notify the congressional defense committees of the—
 - Annual cancellation ceiling and rationale supporting the ceilings
 - Unbudgeted cancellation ceiling costs
 - Financial risk assessment for not budgeting the cancellation ceiling costs



Inherently Governmental Functions

- ▶ Implements Section 804 of the 2005 NDAA
- ▶ Can only contract for performance of acquisition functions that are closely associated with inherently Governmental functions if—
 - CO determines that appropriate military or civilian personnel—
 - Cannot reasonably be made available to perform the functions
 - Will supervise contractor performance of the contract
 - Will perform all inherently Governmental functions
 - CO ensure that the agency addresses any potential organization conflict of interest of the contractor



More Cases of Interest

- ▶ Personal Services Contracts
- ▶ Security-Guard Services
- ▶ Contractor Performance of Security Guard Functions
- ▶ Firefighting Service Contracts



On the Horizon

- ▶ Emergency Acquisitions
- ▶ Item Unique Identification (IUID) Registry
- ▶ Award Fee Contracts
- ▶ Acquisition Integrity Analysis
- ▶ Lease of Vessels, Aircraft, and Combat Vehicles



On the Horizon

- ▶ Evaluation Factor for Employing or Subcontracting with Members of the Armed Forces Reserve
- ▶ Aviation Into-Plane Reimbursement (AIR) Card
- ▶ Contracting Officer's Responsibilities
- ▶ Receiving Reports for Shipments